LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 2 1965
JOHN F. DAVIS, CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1965.

No. 790

SIGNAL MANUFACTURING CO.,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MAURICE EPSTEIN
85 Devonshire Street
Boston, Massachusetts
Attorney for Petitioner

Blanchard Press, Inc., Boston, Mass. — Law Printers

In the
Supreme Court of the United States

OCTOBER TERM, 1965.

No.

SIGNAL MANUFACTURING CO.,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Opinion Below

The Opinion of the Court of Appeals is not yet reported. It appears at page 47 of the Certified Record.

Jurisdictional Grounds

The judgment of the Court of Appeals was entered on November 4, 1965.

The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254(1) and Section 2101(c).

Question Presented

Whether the Court of Appeals is required to enforce a National Labor Relations Board order to an employer to deal with a single individual, admittedly "persona non grata", who had been designated and dealt with, prior to his admittedly "ill advised and even offensive" behavior, as one of a substantial number of Union stewards.

Statutes Involved

Section 7 of the National Labor Relations Act, 61 Stat. 136, 73 Stat. 519, 29 U.S.C.A. Section 141 et seq., provides as follows:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 9 provides as follows:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bar-

gaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:" . . .

Statement

In its short opinion rendered on November 4, 1965, the Court of Appeals "with considerable reluctance" ordered enforcement of the National Labor Relations Board's Order in this case.

The facts in this case are not in dispute.

The Petitioner operates in Salem, Massachusetts, a plant employing approximately 700 employees in the manufacture of electric floor polishers and other electrical appliances. The employees are represented by Amalgamated Local 257, International Union of Electrical, Radio and Machine Workers, AFL-CIO, with whom the Petitioner has for many years had a good relationship.

Charles Silvia, an employee of the Petitioner, was a departmental Steward elected by his department and a part-time business representative for the Union appointed by the Executive Board of the Local. (R. 17)[1] Since May 14, 1964 the Petitioner has refused to meet with Mr. Silvia in his capacity as Shop Steward or Union representative. (R. 21).

The circumstances surrounding the Petitioner's refusal to meet with Mr. Silvia as Shop Steward or as Union Representative are as follows.

There has been a long-term cordial bargaining relationship between the Petitioner and the Union. On Thursday, May 14, 1964, Mr. Louis Zaiger, the past President and founder of the Petitioner, who had been active to within a few months of his death, died after a series of heart attacks. When Mr. Silvia was informed that afternoon by

[1] R. refers to the certified Record.

his department manager, Mr. Doucette, that Mr. Zaiger had died, Mr. Silvia turned to him and said: "Good, why didn't he take Bernie Ruskin with him." (R. 32) This statement was not denied or disavowed by Mr. Silvia.

When this statement came to the attention of Mr. Robert Lappin, Mr. Zaiger's son-in-law and President of the Petitioner, Mr. Smith, the Director of Engineering and elder statesman of the Petitioner (R. 34), Mr. Kajos, the Personnel Director, and Mr. Ruskin, the Director of Manufacturing, the Petitioner decided that nothing constructive could be gained by discussing the problems of the Petitioner and the Union with a man who had maligned the man who had just died and who was the founder of the Petitioner. (R. 36)

As a result of this decision by the Petitioner, on the afternoon of May 14, 1964, the Petitioner's counsel informed Mr. Nocella, the Union Business Agent, that the Petitioner's officials would not meet with Mr. Silvia or recognize him in his capacity as Steward or Union representative. (R. 21)

Since May 26, 1964 grievances have been processed in the plant without Mr. Silvia as they would have been otherwise. (R. 21, 30, 28). On one occasion Mr. Nocella and Mr. Silvia in his capacity as Union representative had a cordial meeting at Petitioner's attorney's office, followed by lunch, to discuss and to try to resolve some grievances scheduled for arbitration. (R. 23) However, the Petitioner has consistently maintained that it would not deal with Mr. Silvia in his capacity as Union Steward or representative and would refuse to meet with him. (R. 21)

Argument

The Court of Appeals, as we have pointed out, agreed that its conclusion was reached "with considerable reluctance". It is apparent, therefore, that the Court felt that

it had no alternative under the law. We respectfully submit to this Court that the alternative does exist, and that in this respect the Court below is in conflict with Court of Appeals for the Sixth Circuit in *NLRB* v. *Kentucky Utilities Co.*, 182 F.2nd 810.

Although the facts in the latter are different, the legal principal is clearly the same as that involved in our case, i.e., whether or not the Court of Appeals and the NLRB and the Employer are required to accept and deal with each and every individual selected by the Union.

This conflict arises because in our case the Court made it plain that it regarded the individual as "persona non grata" and that it would have preferred to support the Petitioner's contention that it was justified in refusing to do business with him personally, but took the position the Court is helpless once the choice has been made by the employees. The Court of Appeals in the *Kentucky Utilities* case, held that the Court is not helpless.

As in the *Kentucky Utilities* case, the Petitioner's unwillingness to deal with the single individual involved does not bespeak in any measure an unwillingness to deal with the labor union. It is respectfully submitted that Section 7, in guaranteeing the right of the employees to select their own representatives, is reasonably satisfied by the Board's certification and the Petitioner's recognition of the labor union of their choice. Section 9 refers to "representatives designated or selected . . . by the majority of the employees in a unit appropriate . . . ." It is respectfully submitted that this language of Section 9 must be referred to in construing "representatives of their own choosing" in Section 7. It is, then, not necessary or reasonable to conclude that each department of the Petitioner has a guaranteed right to choose a "departmental steward" and it would follow that an employer's unwillingness to deal with an

offensive individual designated as a "departmental steward" is not an unfair labor practice.

It is noted that Section 8(b)(1)(B)[2] does not have a counterpart in Section 8(a).

In view of this conflict between the Circuits, and in view of the importance, in labor negotiations, of the mutual personal relationships among the negotiators, and in view of the especially emotional nature of the remarks of the offending union steward in this case, and the complete absence of any suggestion of anti-union animus, it is respectfully submitted that the issue is important and fairly warrants consideration by this Court and the allowance of this petition for a writ of certiorari.

Respectfully submitted,

MAURICE EPSTEIN
85 Devonshire Street
Boston, Massachusetts
Attorney for Petitioner

[2] "It shall be an unfair practice for a labor organization. . .or its agent. . .to restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

Appendix A

United States Court of Appeals
For the First Circuit

No. 6563.

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

v.

SIGNAL MANUFACTURING COMPANY,

RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

[150 NLRB No. 110]

Before ALDRICH, *Chief Judge*, MCENTEE, *Circuit Judge*, and CAFFREY, *District Judge*.

Warren M. Davison, Attorney, with whom *Arnold Ordman*, General Counsel, *Dominick L. Manoli*, Associate General Counsel, and *Marcel Mallet-Prevost*, Assistant General Counsel, were on brief, for petitioner.
Maurice Epstein for respondent.

OPINION OF THE COURT.

October 14, 1965.

PER CURIAM. With considerable reluctance, we affirm the NLRB's decision that the employer must continue to deal with the union through the union's steward Silvia, in spite of the fact that on the day of the company founder's death, Silvia, upon learning of the fact said, "Good, why didn't he take [the director of manufacturing] . . . with him." Although we believe the Board's concession that Silvia's remark, at least so far as the founder was concerned, "may" have been "ill-advised, and even offensive" to be an understatement, its conclusion that it was insufficient to

warrant the employer's refusal to deal must be regarded as an administrative finding within the Board's expertise. The right of employees to be represented by officials of their own choice doubtless must outweigh any principle of *persona non grata.*

An order will be entered enforcing the order of the Board.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 790

SIGNAL MANUFACTURING CO., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 7-8) is reported at 351 F. 2d 471. The Board's Decision and Order are reported at 150 NLRB No. 110.

JURISDICTION

The judgment of the court of appeals was entered on October 14, 1965 (Pet. 7). The petition for a writ of certiorari was filed on December 2, 1965. The jur-

isdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly found that the employer violated his bargaining obligation under the National Labor Relations Act by refusing to meet and deal with a duly elected union steward.

STATUTE INVOLVED

Sections 7 and 9(a) of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth at pp. 2-3 of the petition. Sections 8(a)(1) and 8(a)(5) of the Act also are relevant. Their pertinent parts are as follows:

> Sec. 8.(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

For a number of years, the Union [1] has been the recognized representative of petitioner's production

---

[1] Amalgamated Local 257, International Union of Electrical, Radio and Machine Workers, AFL-CIO.

and maintenance employees (B.A. 3).[2] The collective bargaining agreement in effect at the time the events herein occurred included a three-step grievance procedure, with the Union's departmental steward having a role at each of the steps (B.A. 4; 16-17). Employee Charles Silvia was one of the Union's 16 elected departmental stewards in petitioner's plant (B.A. 4; 17).

Louis Zaiger, the founder of the Company and for many years its president and operating head, died on Thursday, May 14, 1964 (B.A. 4; 31-32). When Foreman Doucette told Silvia of Mr. Zaiger's death, Silvia said, "Good, why didn't he take Bernie Ruskin [petitioner's director of manufacturing] with him" (B.A. 4; 32). Doucette reported this remark to his superiors, including Ruskin, and, on the afternoon of May 14, Company officials decided that, because of Silvia's remark, they would thereafter refuse to deal with him as a steward or as a representative of the Union (B.A. 4-5; 32-34, 35-37).[3]

The Company has adhered to its decision not to deal with Silvia (B.A. 5; 18-19, 21-22, 28-30), who has continued to be the duly elected shop steward from his department (B.A. 20). Grievances from Silvia's

---

[2] References designated "B.A." are to portions of the record printed as an appendix to the Board's brief in the court below.

[3] In addition to being an elected departmental steward, Silvia was also a part-time paid business representative of the Union, in which capacity he conferred with employees outside the plant and occasionally communicated with petitioner's officials (B.A. 4; 17-18).

department, which he would normally sign as steward, have continued to be processed in accordance with the contractual procedure, except that another steward has signed the grievances and appeared at all conferences and meetings in Silvia's place (B.A. 5; 20-21, 25, 28, 30-31).

Upon charges filed by the Union, the Board concluded that the Company violated Section 8(a)(5) and (1) of the Act by refusing to deal with Silvia as the Union steward duly elected by the employees in his department (B.A. 9-10). The Board ordered the Company to cease and desist from the unfair labor practice found; to bargain upon request with the Union through any representative, including Silvia, properly chosen by it; and to post appropriate notices (B.A. 2, 10-12).

The court of appeals, while expressing disapproval of Silvia's remark, affirmed the Board's holding that this remark was insufficient to warrant the Company's refusal to deal with Silvia as the duly elected Union steward and enforced the Board's order (Pet. 7-8).

ARGUMENT

Sections 7 and 9 of the Act give employees the right to bargain collectively through representatives of their own choosing. Thus the identity of employee representatives is ordinarily beyond an employer's legitimate interest, and it is well settled that an employer violates Section 8(a)(5) and (1) of the Act by refusing to negotiate or process grievances with a par-

ticular individual selected by his employees.[4] The only question presented here is whether the justification advanced by the Company for not dealing with Silvia was sufficient to render this general principle inapplicable in this case. This issue, turning on the unique facts of this particular case, was correctly resolved by the court below and presents no occasion for further review.

As the Board pointed out (B.A. 7), "Silvia's callous indifference * * * towards the Company's loss of its widely respected founder is by no means to be condoned." But the remark was uttered on only one occasion and then only to the foreman. It did not "reveal fundamental hostility to the interests of the Company such as to justify a conclusion that Silvia's continued participation in the collective-bargaining process would impede the smooth course of collective bargaining" enjoyed in the past; nor was there any evidence that Silvia had ever before "acted or spoke[n] improperly in his entire career as a union representative" (B.A. 7-8). In these circumstances, and since the employees continued to desire Silvia as their

---

[4] *National Labor Relations Board* v. *Roscoe Skipper, Inc.*, 213 F. 2d 793, 794 (C.A. 5); *National Labor Relations Board* v. *Deena Artware, Inc.*, 198 F. 2d 645, 650-651 (C.A. 6), certiorari denied, 345 U.S. 906; *National Labor Relations Board* v. *Marden Mfg. Co.*, 217 F. 2d 567, 570, n. 7 (C.A. 5), certiorari denied, 348 U.S. 981; *Standard Oil Co.* v. *National Labor Relations Board*, 322 F. 2d 40, 44 (C.A. 6); *National Labor Relations Board* v. *Blanton Co.*, 121 F. 2d 564, 567, 571 (C.A. 8); *Deeco, Inc.*, 127 NLRB 666, 667; *Prudential Ins. Co.*, 124 NLRB 1390, enforced as modified, 278 F. 2d 181 (C.A. 3).

spokesman in grievance matters, the Board was warranted in concluding (B.A. 7): "To deny to that entire group now the right guaranteed by statute to be represented by a fellow worker of their own choice, solely on the ground of an isolated utterance, however improper by Silvia, would amount to an unreasonable balancing of his single act of disrespect against their fundamental privilege."

National Labor Relations Board v. *Kentucky Utilities Co.*, 182 F. 2d 810 (C.A. 6), is distinguishable on its facts. There, the employer refused to bargain or to discuss grievances with Braswell, one of the certified union's international representatives. Braswell was a disgruntled former employee of the company, who, on numerous occasions after it had discharged him, had expressed his hostility to the company and its officials as well as his purpose to harm the company financially in order to ruin it. In these circumstances, the Sixth Circuit held that bargaining with Braswell would have been "a futility" and that the employer was justified in refusing to meet with him or with the union as long as this particular individual was a member of the union's negotiating committee (182 F. 2d at 813). No such circumstances were involved in the present case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

WARREN M. DAVISON,
Attorney,
National Labor Relations Board.

DECEMBER 1965.

END